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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement* submitted by MINBYUN-Lawyers for a Democratic Society, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

1. MINBYUN-Lawyers for a Democratic Society was established in 1988 to contribute the democratization of Korean society. Since then, MINBYUN has worked to improve human rights conditions in legal area, and defended the political prisoners who were particularly arrested in violation of the National Security Law and the Security Observation Law etc. MINBYUN has also endeavored to reform the undemocratic laws and systems in Korean society. After Korean government signed the UN human rights instruments such as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in 1990, MINBYUN has tried to watch Korean government to faithfully implement such Covenants and to perform its responsibility hereunder in domestic arena. In addition, MINBYUN has prepared and submitted alternative reports to the UN in regards to Korean government's reports which it has burden to file under the UN human rights instruments, so as Korean government's reports to be duly considered by the UN.

2. The UN Commission on Human Rights made a resolution in 1998 session (E/CN.4. Res/1998/77) that the conscientious objection to military service is one of the fundamental human rights based upon freedom of thought, conscience and religion. In the context of this 1998 resolution, the UN Commission on Human Rights decided in Resolution in 2000/34 that States should reexamine their current status of laws and customs on conscientious objection to military service, and requested to the Office of the UN High Commissioner of Human Rights to prepare a compilation and analysis of best practices concerning the recognition of conscientious objection to military service and provision of alternative service. Nature of conscientious objection to military service as basic right was already confirmed in 1993 by General Comment(General Comment 22 [48]) of the Human Rights Committee. At that Comment, the Human Rights Committee declared that conscientious objection to military service is from freedom of expression enshrined in Article 18 of International Covenant on Civil and Political Rights. These resolutions and comment of the UN Commission on Human Rights and the Human Rights Committee mean that conscientious objection to military service is in itself a basic human right, regardless of whether or not alternative service has been established by States. Therefore States should respect conscientious objection to military service as legitimate right, and should not punish conscientious objectors. States should also prepare an alternative service for conscientious objectors. As mentioned in the foregoing, Korea is a signatory country on International Covenant on Civil and Political Rights, and took part in the above 2000 resolution of the UN Commission on Human Rights, and thus Korean government has a responsibility to declare internationally and domestically that it respect conscientious objection as human right, and to provide an adequate alternative service for conscientious objectors.

3. The present situation on conscientious objection, however, in Korea is very far from expectation by the above UN resolutions and comment. Surprisingly, about 1,600 conscientious objectors, all of whom are Jehovah's Witnesses, are now in jail as criminals. For the period of 1991-2000, 3,736 conscientious objectors were arrested, sentenced to be guilty in violation of the Military Criminal Law, and imprisoned for three years. Even in 2000, 642 conscientious objectors were convicted. According to their religious faith and conscience, if young Jehovah's Witnesses begin military service, they deny soon exercising military training to use guns, and since there is no exceptional clause for conscientious objectors in the Military Service Law and the Military Criminal Law, their denials to exercise military training eventually lead to jail. In the past, the sentence to them, without any exception, was given for the imprisonment of three years, which is maximum term under the Military Criminal Law. But last year, some of them did not correspond to conscription

notice and thus instead of the Military Criminal Law, the Military Service Law applied to them. The trial was preceded before the civil court, not military court. In those cases, some judges ruled that the convicted persons should be imprisoned for one year and six months, which is shorter than three years term by military court. Even though these civil court decisions reflect sympathy with conscientious objectors to some degree, there is no actual change, because conscientious objection is not recognized as legally meaningful right and conscientious objectors do not choose any alternative service. At the present, conscientious objectors are treated as criminals in Korean society, and have serious problems in obtaining jobs. They are not eligible to be employed as a public officer, and also because of importance of military service career in business sector, it is nearly impossible for them to have proper jobs.

4. Jehovah's Witnesses who were sentenced to be imprisoned for three years in jail as conscientious objectors have been discriminated even in jail. Ordinary prisoners are able to apply a parole where their term in jail elapses one third, but in the case of Jehovah's Witnesses they are unable to enjoy a parole until elapse of twenty-seven months. Furthermore, their religious meeting is strictly prohibited on the ground that they denied to perform military service based upon their religious faith, even though the correction officer admits that conscientious objectors are best prisoners who faithfully observe the correction rule. These extreme discrimination will continue unless the present legal situation does not change. Korean government has responsibility to do a reform.

5. Disregard to conscientious objection in Korean society is related to the military dictatorship which began in 1961 coup de tat and continued to early 1990s. The military junta established conception most important duty of Korean people is to perform the military service for defense of country, because historically, Korea was invaded by foreign countries and after liberalization from Japan, Korea was divided into South and North. From this background, in Korea, military service has become unavoidable duty, unless people are not physically unable to do it or are employed in defense industry. Korean people have not dared to be a conscientious objector except Jehovah's Witnesses. However, military dictatorship has been overcome through civilian movement, and Korean society has been developing democracy in whole area. Therefore there is no ground that conscientious objection to military service is still to be unrecognizable from the viewpoint of defense of country and national security against North Korea.

6. Since last year, as the fact that many Jehovah's Witnesses are in jail as conscientious objectors is known to public, Korean people have become to concern about the issue of conscientious objection to military service. Civilian activists organized groups to support and help Jehovah's Witnesses in jail, and started to campaign conscientious objection to military service is to be respected as human right. The press also reported in detail the process of trials on conscientious objectors at courts. MINBYUN also took part in counseling conscientious objectors during trial. It is expected that solidarity of non-governmental organizations will be made in large scale for dealing with the issue of conscientious objection to military service.

7. In December 2001, Mr Taeyang Oh, a 26-year-old Buddhist and pacifist, determined that he would not report for duty of military service to conscription office according to his conscience. He is first conscientious objector outside the Jehovah's Witness. He says that Buddhism teaches that all living beings fear death. Harming or killing another person in war, or learning to use guns would violate his religious and moral beliefs. It is presumed that Mr Oh will soon be arrested in violation of the Military Service Law, and indicted by prosecutor like Jehovah's Witnesses. The

case of Mr Oh clearly shows that the issue of conscientious objection to military service is not any more limited to matter of only Jehovah's Witnesses. Sooner or later more people will determine that they are conscientious objectors to military service, as following an example of Mr Oh. Certainly, there will be more victims of conscientious objectors, if Korean government maintains present military service system.

8. In this connection, MINBYUN sincerely suggest that the UN Commission on Human Rights be well informed of exact situation on conscientious objection to military service in Korea, and that the UN Commission on Human Rights require to Korean government to report whether Korean government has reexamined legal system in relation to the issue of conscientious objection to military service so as to follow the UN resolutions and comment which have repeatedly recognized it as fundamental human right, and what Korean government will do in order to concretize such UN resolution and comment in near future. Apart from this, MINBYUN strongly hope that the UN Commission on Human Rights will recommend Korean government immediately stop from punishing the conscientious objectors as criminals and prepare a special measure to release conscientious objectors. Even before release, to the prisoners of conscientious objectors, reasonable parole should be admitted as soon as possible, and they should be able to have a religious meeting during imprisonment without any discrimination. Also MINBYUN expect that as one of measures for solving the issue of conscientious objection to military service, Korean government should newly legalize conscientious objection to military service as human right and introduce alternative system so that the conscientious objectors may not be punished as criminals. This change of policy will greatly and drastically contribute to democracy in Korean society, and will be in accordance with the policy of national defense in real meaning.